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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MAXIMILIAN KLEIN, et al.,

Plaintiffs.

24 | VS.

DRAFT

METATEX FORMS, INC.,

This Document Relates To: All Actions

Consolidated Case No. 3:20-cv-08570-JD

TENTH JOINT CASE MANAGEMENT STATEMENT

The Hon. James Donato

Hearing Date: January 19, 2023 at 10:00 a.m.

TENTH JOINT CASE MANAGEMENT STATEMENT

In advance of the January 19, 2023 Status Conference, counsel for Consumer Plaintiffs (“Consumers” or “Users”), Advertiser Plaintiffs (“Advertisers”), and defendant Meta Platforms, Inc. (“Meta” or “Facebook”) respectfully submit this Tenth Joint Case Management Statement. This statement summarizes for the Court open items that the parties either jointly or individually contend are ripe for the Court’s consideration¹ and provides updates to the Court as to material developments on pertinent matters since the parties’ prior Case Management Statement, dated October 13, 2022.

I. Pending Motions

A. Meta’s Discovery Letter Brief to Compel Consumer Plaintiffs’ Responses to Interrogatory Nos. 5, 9-14

11 On October 19, 2022, Meta moved to compel Consumer Plaintiffs' Responses to
12 Interrogatory No. 5 of Meta's First Set of Interrogatories and Interrogatory Nos. 9-14 of Meta's
13 Second Set of Interrogatories to Consumer Plaintiffs. Dkt. No. 365. Pursuant to the Court's order,
14 dated October 26, 2022, Consumer Plaintiffs filed their response on November 16, 2022. Dkt.
15 Nos. 372, 378.

1. Meta’s Further Statement

In light of Users' attempt to differentiate between an alleged "Social Media Market" and an alleged "Social Network Market" with the conclusory allegation that "social networks, such as Facebook, provide ***specific product features*** to users which social media applications generally do not provide at all," Compl. ¶ 67 (emphasis added), Interrogatory Nos. 13 and 14 ask Users to state, "[f]or each ***feature or activity*** available to users on each Meta Product that is a Participant" in Users' alleged Social Network Market and Social Media Market "whether the ***feature or activity***" is within that alleged market (emphasis added). Users refuse to provide responsive information, instead asserting that Meta's requests seek irrelevant information and that Meta's request for supplementation should be denied because only "Facebook knows 'each feature or activity available

²⁷ ²⁸ ¹ Per the Court’s guidance at the August 11, 2022 hearing, the parties have narrowed this statement to the issues that the parties either jointly or individually contend are ripe for the Court’s consideration. Aug. 11, 2022 Hrg. Tr. at 46:6–10.

1 to users' on its own products; [Users] do not. [Users] cannot respond to this undefined, improper
 2 interrogatory unless Facebook identifies each feature or activity it is asking about. Judge Boasberg
 3 agreed, compelling Facebook to produce such a list to the FTC." Dkt. No. 378 at 3. Accordingly,
 4 on December 13, 2022, Meta sent Users the features and activities list provided to the FTC, as well
 5 as an additional 25 features or activities that Meta requested that Users categorize. Meta requested
 6 that Users supplement their responses to Interrogatory Nos. 13 and 14 to identify whether each
 7 feature or activity included in Meta's December 13 letter is or is not within Users' alleged (i) Social
 8 Network Market (Interrog. No. 13), or (ii) Social Media Market (Interrog. No. 14). On
 9 December 22, 2022, Users refused. Thus, the issue is ripe for the Court's decision.

10 **2. Consumers' Response**

11 Consumers and Facebook have a standing dispute as to Facebook's Interrogatory Nos. 13
 12 and 14, which ask Consumers to state for each "feature or activity" of a Facebook product, whether
 13 that feature or activity is or is not with Consumers' alleged relevant markets. The parties completed
 14 letter briefing to the Court regarding their dispute on November 16, 2022. Dkts. 365, 372, 378. On
 15 December 13, 2022—nearly one month after briefing on the parties' dispute closed—Facebook
 16 again demanded that Consumers respond to Interrogatory Nos. 13 and 14, even though Consumers
 17 have made clear that they object to these interrogatories and the parties' dispute as to these very
 18 interrogatories is already before the Court.

19 Facebook states the "only" reason Consumers object to Facebook's interrogatories is
 20 because only Facebook knows each feature or activity it offers on its products, and Consumers did
 21 not have this information. According to Facebook, then, Consumers must now respond because
 22 Facebook has since provided a cobbled-together list of more than 320 "features or activities"
 23 supposedly available across Facebook, Instagram, WhatsApp, and Messenger. Facebook is wrong.
 24 Contrary to Facebook's contention, Facebook's failure to identify the features or activities it was
 25 asking about in Interrogatory Nos. 13 and 14 was not the only basis on which Consumers objected
 26 to these interrogatories. Among other objections they stated, Consumers reject the premise that it
 27 is relevant to Consumers' claims whether individual "features or activities" of a product—rather
 28 than the product itself—are in or out of a relevant market. Facebook knows this: Consumers have

1 explained this point to Facebook in multiple correspondence and meet-and-confers, and Consumers'
 2 letter brief makes exactly this point. *See* Dkt. 378 at 3.

3 Moreover, Facebook's list of hundreds of supposed features and activities provides strong
 4 support for Consumers' objection. Many of the items on the list are incomprehensible to anyone
 5 but a Facebook engineer. They include, for example: "oEmbed (Legacy) Plugin," "App Events via
 6 Facebook SDK," and "Offline Conversions" and distinguish, for example, between "Viewing or
 7 posting content in a Group of any size where 0-15% of pairs of members of the Group are Facebook
 8 Friends" (one supposed feature) v. "Viewing or posting content in a Group of any size where 16-
 9 50% of pairs of members in the Group are Facebook Friends" (a different supposed feature).

10 Facebook's motion to compel should be denied.

B. Consumers' Letter Brief Regarding FTC Deposition Transcripts

12 Consumers moved to compel Meta to: (1) produce transcripts of two depositions of Meta in
 13 the pending *FTC v. Meta* antitrust litigation; and (2) provide a list of all depositions of Meta and its
 14 current and former employees in *FTC v. Meta* that are currently scheduled and update that list
 15 weekly going forward, to facilitate Consumers' future requests for select, relevant deposition
 16 transcripts and marked exhibits. Dkt. No. 377. Pursuant to the Court's order, Meta responded to
 17 Consumers' motion. Dkt. No. 382, Dkt. No. 390.

C. Quinn Emanuel's Substitution Motion

19 Quinn Emanuel Urquhart & Sullivan, LLP filed a motion and supporting brief to substitute
 20 Quinn Emanuel attorney Kevin Y. Teruya for former Quinn Emanuel attorney Stephen A. Swedlow
 21 as Interim Co-Lead Consumer Class Counsel. Dkt. No. 381, Dkt. No. 384. Hagens Berman Sobol
 22 Shapiro LLP and Lockridge Grindal Nauen P.L.L.P. filed a brief in response. Dkt. No. 383. The
 23 Court has indicated that it will take up the substitution of counsel at the upcoming January 19, 2023
 24 status conference. Dkt. No. 388.

D. Consumers' and Meta's Discovery Letter Briefs to Compel Production From Apple

27 On December 15, 2022, Consumer Plaintiffs moved to compel non-party Apple Inc.'s
 28 production of documents in response to Consumer Plaintiffs' subpoena dated April 6, 2022.

1 Dkt. No. 398. On December 30, 2022, Meta moved to compel non-party Apple Inc.’s production
 2 of documents in response to Meta’s subpoena dated June 3, 2022. Dkt. No. 406. Pursuant to the
 3 Court’s order, dated January 5, 2023, non-party Apple Inc. is directed to file a response by
 4 January 26, 2023. Dkt. No. 407.

5 **E. Meta’s Discovery Letter Brief to Compel Advertisers’ Response to**
 6 **Interrogatory No. 10**

7 On January 11, 2023, Meta moved to compel Advertiser Plaintiffs’ response to Interrogatory
 8 No. 10 of Meta’s Third Set of Interrogatories to Advertiser Plaintiffs. Dkt. No. 409.

9 **II. Additional Disputes**

10 **A. Plaintiffs’ Request for Facebook Deposition and Interview Transcripts**

11 **1. Plaintiffs’ Statement**

12 On September 24, 2021, Plaintiffs served a straightforward document request, Joint RFP No.
 13 1, seeking from Facebook, in pertinent part, deposition transcripts and their equivalents from other
 14 relevant lawsuits and government investigations involving Facebook. For nearly 16 months,
 15 Facebook has refused Plaintiffs’ request, stating that Plaintiffs seek supposedly improper “cloned”
 16 discovery. The reality is that Plaintiffs’ request for transcripts from other Facebook-related lawsuits
 17 and government investigations is entirely appropriate and routine. *See In re Google Play Store*
 18 *Antitrust Litig.*, Case No. 3:21-md-02981-JD (N.D. Cal.) (Donato, J.), Dkt. 38 at 17:1–3, 17:10–13
 19 (compelling production of deposition transcripts from other case, explaining “I don’t find the idea
 20 of producing off-the-shelf discovery already done in another case to be inherently odd.”).
 21 Facebook’s objections are based on a series of false premises, and the Court should reject them.

22 *First*, Facebook maintains that producing transcripts from other lawsuits and investigations
 23 is somehow “wildly overbroad and burdensome.” But Facebook provides no explanation for why,
 24 especially when it is clear those other matters involve highly similar factual and legal issues, and
 25 Facebook does not substantiate any burden. Similarly large companies regularly compile deposition
 26 and other transcripts to maintain in those companies’ files for litigation, investigatory, and other
 27 purposes. Moreover, the firms handling the other matters certainly have the transcripts handy (or
 28 can obtain them quickly). Given Facebook’s resources and the number of litigations and

1 investigations it acknowledges, it is highly improbable that Facebook does not already have the
 2 requested transcripts compiled in a computer database or other central system. And to the extent
 3 that “coordination” between Facebook’s in-house counsel and other outside counsel is purportedly
 4 required, Facebook vastly overstates the supposed efforts that are required to identify and compile
 5 transcripts in the digital era, *i.e.*, sending and uploading transcripts and related files electronically.

6 ***Second***, Facebook’s offer to “meet-and-confer further with Plaintiffs” as to specific
 7 transcripts is an empty one. Facebook refused Plaintiffs’ request for transcripts. Plaintiffs then
 8 offered to limit their request using a list-based approach like the one that the Court directed the
 9 parties to employ as to Plaintiffs’ request for *FTC v. Meta* deposition transcripts. Facebook refused
 10 that, too. Further discussions on the exact same topic would therefore be unproductive. The parties’
 11 negotiations regarding select deposition transcripts from *FTC v. Meta* confirm this. When Plaintiffs
 12 provided a good faith statement of the relevance of the select transcripts they requested, Facebook
 13 for weeks stated that Plaintiffs had not adequately described the relevance of the transcripts to
 14 Facebook’s unilateral liking. There is no reason to think Facebook will do anything other than insist
 15 on continuing to play gatekeeper and demand Plaintiffs provide explanations that will never satisfy
 16 Facebook, resulting in further delay and further disputes.

17 ***Finally***, there is no reason to condition Plaintiffs’ receipt of the requested transcripts on a
 18 reduction in Plaintiffs’ deposition time in this case. At the last status conference, the Court did not
 19 require Plaintiffs to reduce their deposition time in return for receiving transcripts from other
 20 litigations. Moreover, Plaintiffs seek the prior transcripts of possible fact witnesses to inform,
 21 improve, and streamline depositions in this case, not to completely replicate them. And as to Rule
 22 30(b)(6) deposition time, the parties’ deposition protocol provides both Consumers and Advertisers
 23 21 hours of questioning, collectively. Given the presence of two classes, the differences in their
 24 claims, and the complexity of issues, 21 hours of Facebook’s corporate testimony between them is
 25 not a lot.

26 As explained below, the Court should similarly order Facebook to produce select unredacted
 27 transcripts and exhibits that Plaintiffs request from each identified lawsuit and government
 28 investigation. Specifically, to the extent that Plaintiffs are already aware of them, Plaintiffs identify

1 below those specific transcripts that they seek, without prejudice to making additional select
 2 requests from these lawsuits and investigations should it become appropriate. For those matters
 3 where Plaintiffs are presently unaware of the identities of Facebook witnesses, Plaintiffs request that
 4 Facebook: (1) immediately provide Plaintiffs lists of the transcripts from each identified lawsuit and
 5 government investigation; and (2) then produce to Plaintiffs—within **5 business days of Plaintiffs' request for a given transcript**—the specific unredacted transcript that Plaintiffs request (along
 6 with any marked exhibits). Depositions will soon begin: Plaintiffs' first deposition of a Facebook
 7 employee has been noticed for February 3, 2023. Plaintiffs' request will thus assist Plaintiffs in
 8 their selection of, and preparation for, depositions of Facebook and its current and former employees
 9 in this case.

10 **Transcripts from U.S. Antitrust Authorities' Investigations.** Plaintiffs seek lists of
 11 transcripts of “witness interviews” and other testimony that current and former Facebook employees
 12 provided to the FTC and the House Antitrust Subcommittee. Based on the lists, Plaintiffs then seek
 13 to make select transcript requests.

14 In 2019, the FTC commenced a pre-suit antitrust investigation into Facebook that later
 15 culminated in the federal *FTC v. Meta* antitrust case currently pending before Judge Boasberg in the
 16 District of Columbia. As part of this pre-suit investigation, the FTC conducted transcribed witness
 17 interviews, including of current and former Facebook employees. The FTC has already produced
 18 these transcripts to Facebook in the *FTC v. Meta* case. Facebook suggests that transcripts from the
 19 FTC's pre-suit investigation and the later *FTC v. Meta* case are “cumulative.” This is conjecture:
 20 Facebook has refused to identify the individuals that provided testimony to the FTC during its pre-
 21 suit investigation, so Plaintiffs cannot compare the overlap (if any) between those individuals and
 22 the deponents providing testimony in *FTC v. Meta*. And while Facebook previously offered to
 23 produce transcripts of testimony that Facebook employees provided to the FTC during its pre-suit
 24 investigation if Plaintiffs agreed to limit the depositions of any such employees in this case to four
 25 hours, Facebook demanded Plaintiffs agree to Facebook's request without Plaintiffs knowing the
 26 identity of these individuals nor the scope of their prior testimony. Even if Plaintiffs had this
 27 information, there is no reason to limit Plaintiffs' deposition time here.

1 Similarly, the House Antitrust Subcommittee conducted its own antitrust investigation of
 2 Facebook, which also consisted of Facebook employee interviews and culminated in the
 3 Subcommittee's widely-publicized "Investigation of Competition in Digital Markets" report.
 4 Again, Facebook has declined to identify the Facebook witnesses that provided testimony to the
 5 House Antitrust Subcommittee.

6 Facebook was already ordered in this case to re-produce to Plaintiffs Facebook's document
 7 productions to the FTC and House Antitrust Subcommittee as part of their respective antitrust
 8 investigations. *See* Dkt. 82. It should also produce the requested transcripts in its possession.

9 **Transcripts from Foreign Antitrust Authorities' Investigations.** The Australian
 10 Competition & Consumer Commission, the U.K. Competition & Markets Authority, and the
 11 German Federal Cartel Office have also conducted antitrust investigations regarding Facebook. The
 12 ACCC investigated competition in the "Social Media Services" market and in digital advertising,
 13 concluding that Facebook has substantial market power. The U.K. CMA: (a) investigated
 14 competition in "social media" and "digital advertising" services, concluding that Facebook has
 15 market power in each; and (b) is investigating Facebook's alleged anticompetitive "Network
 16 Bidding Agreement" with Google. Finally, the German FCO investigated and concluded that
 17 Facebook has a dominant position "in the market for social networks for private users."

18 Facebook notes that these competition authorities are foreign and therefore investigated
 19 Facebook pursuant to foreign antitrust law. Facebook misses the point. Notwithstanding their
 20 foreign nature, these investigations bear, for example, on the relevant **product** market(s) in which
 21 Facebook competes and market participants and entry barriers in those **product** markets; Facebook's
 22 dominant position and the metrics for measuring it; and the anticompetitive effects of Facebook's
 23 conduct on Facebook users and advertisers. The U.K. CMA's GNBA investigation also bears on
 24 an alleged anticompetitive advertising agreement with Google that forms the partial basis for
 25 Advertisers' claims. All of these are disputed issues among Plaintiffs and Facebook in this case.
 26 Plaintiffs seek lists of current and former Facebook employees that provided testimony to these
 27 competition authorities, so that Plaintiffs can make requests for specific transcripts.

28 **Transcripts from Domestic Regulators' Investigations Regarding Facebook's Data**

1 **Practices.** In the wake of the Cambridge Analytica scandal in 2018, domestic government
 2 regulators investigated Facebook’s data practices and related public statements, including whether
 3 those practices and statements were deceptive. These include, for example: (a) the Securities and
 4 Exchange Commission; (b) the Federal Trade Commission; and (c) several State Attorneys General,
 5 including the D.C. Attorney General. Consumers allege that Facebook obtained and maintained
 6 monopoly power by deceiving the market as to its data collection and use practices. Facebook
 7 employees’ testimony from these investigations bears on those data practices and the veracity of
 8 Facebook’s related statements and is therefore relevant to Consumers’ antitrust claims.

9 Facebook has identified these investigations in the Cambridge Analytica MDL and stated
 10 that its current and former employees provided testimony in these investigations. While Facebook
 11 appears to separately count these investigations, Facebook overstates the count because the
 12 investigations are related to one another. In any case, Facebook also appears to have already
 13 compiled and produced transcripts from at least some of these investigations to the Cambridge
 14 Analytica MDL plaintiffs. *See In re Facebook, Inc. Consumer Privacy User Profile*, Case No. 3:18-
 15 md-02843-VC (N.D. Cal.), Dkts. 619-4, 662. There is no reason Facebook should not also produce
 16 the relevant transcripts from these investigations here, which Plaintiffs requested prior to this case
 17 management statement (and which Facebook rejected).

18 Facebook also claims that Plaintiffs do not explain why Plaintiffs’ request from these
 19 investigations “is not duplicative of their requests.” To be clear, Facebook has declined to provide
 20 Plaintiffs in this case with the identities of its current and former employees that provided testimony
 21 to these regulators during their investigations. In any event, publicly available information indicates
 22 that, at least, CEO Mark Zuckerberg provided testimony to the SEC, and former Platform Operations
 23 Manager Sandy Parakilas provided testimony to the D.C. Attorney General.

24 Plaintiffs in this case have already noticed the deposition of Mr. Parakilas and stated to
 25 Facebook their intention to depose Mr. Zuckerberg. Contrary to Facebook’s assertion, Plaintiffs
 26 requested Mr. Zuckerberg’s SEC transcript in correspondence prior to this case management
 27 statement. Moreover, the SEC took testimony from Mr. Zuckerberg regarding the Cambridge
 28 Analytica scandal, when Mr. Zuckerberg and Facebook learned of the scandal, and the veracity of

1 Facebook's and its executives' statements concerning the scandal, all of which are pertinent to
 2 Consumers' deception-based antitrust claims. In addition to Mr. Zuckerberg's transcript, Plaintiffs
 3 also request that Facebook produce lists of the other current and former Facebook employees that
 4 provided testimony in these investigations, so that Plaintiffs can request select, additional
 5 transcripts.²

6 **Cambridge Analytica MDL Deposition Transcripts.** From the Cambridge Analytica
 7 MDL, Plaintiffs seek: (a) specific Rule 30(b)(1) deposition transcripts identified below; and (b) a
 8 list of Rule 30(b)(6) topics, so Plaintiffs can make requests for select transcripts. The MDL involved
 9 claims regarding the data that Facebook collects and shares with third parties, how that data is used,
 10 and the deceptive nature of these practices and Facebook's related public statements. Testimony
 11 from this case is thus relevant to, among other things, Consumers' deception-based antitrust claims.

12 Facebook has refused to share with Plaintiffs the list of depositions in the Cambridge
 13 Analytica MDL. Plaintiffs therefore request a complete list of the Rule 30(b)(6) deposition topics,
 14 so that Plaintiffs can request select transcripts of Facebook's testimony on pertinent topics. As to
 15 Rule 30(b)(1) depositions from the MDL—and despite Facebook's refusal to provide the list—
 16 recent public filings identify the current and former employees that were deposed. Based on this
 17 list—and without prejudice to making additional, select requests in the future—Plaintiffs request
 18 that Facebook produce the deposition transcripts of the following pertinent Facebook employees:
 19 Sam Lessin; Steven Elia; Antonio Garcia-Martinez; Shirine Sajjadi; Mike Vernal; Bill Fusz; Aldo
 20 King; Yul Kwon; Vladimir Fedorov; Monicka Bickert; Rob Sherman; Eddie O'Neil; Konstantinos
 21 Papamiltiadis; Erin Egan; Steve Satterfield; Dan Rose; Ime Archibong; and Allison Hendrix.

22 **Social Ranger Deposition Transcripts.** Plaintiffs seek deposition transcripts from the
 23 *Social Ranger* case. *Social Ranger* is a previous antitrust case against Facebook involving similar
 24 issues over the relevant market for "social game networks".³ While Facebook has refused to provide
 25

26 ² Mr. Parakilas' counsel has offered to produce to Plaintiffs the transcript of Mr. Parakilas' testimony
 27 to the D.C. Attorney General. Plaintiffs continue to seek from Facebook a list of other witnesses
 that provided testimony to the D.C. Attorney General.

28 ³ Facebook chooses to ignore the "social games network" market and focus on the "virtual currency
 services" market that was also at issue in *Social Ranger*.

1 a list of the depositions in *Social Ranger*, the public docket in that case indicates that Facebook
 2 employees such as Mark Zuckerberg, Dan Rose, Dan Levy, and David Ebersman were deposed.
 3 See *Social Ranger LLC v. Facebook Inc.*, Case No. 1:14-cv-01525 (D. Del.). Dr. Dennis Carlton—
 4 Facebook’s liability expert, and whom Facebook is also using this case—was also deposed.

5 Plaintiffs have already stated to Facebook their intentions to depose Messrs. Zuckerberg,
 6 Rose, and Levy in this case. In this case, Facebook also produced to Plaintiffs documents from
 7 former CFO Mr. Ebersman’s files. In addition to the Zuckerberg, Rose, Levy, Ebersman, and
 8 Carlton transcripts, Plaintiffs seek a list of the Rule 30(b)(6) and 30(b)(1) transcripts from *Social*
 9 *Ranger*, so that Plaintiffs can make any additional requests for select transcripts.

10 **Fraley Deposition Transcripts.** Plaintiffs request a full list of Rule 30(b)(1) and Rule
 11 30(b)(6) depositions from *Fraley*, a case involving Facebook’s “sponsored stories” feature.
 12 Testimony from this case bears on Facebook’s data and advertising practices, representations, and
 13 omissions concerning this feature. Publicly available filings indicate, for example, that Gokul
 14 Rajaram (Facebook’s former Product Director for Ads) and John Hegeman (a then-engineer, and
 15 now Facebook’s Vice President of Monetization) were deposed. Facebook has produced documents
 16 from Messrs.’ Rajaram’s and Hegeman’s files to Plaintiffs in this case. Moreover, Facebook Dr.
 17 Catherine Tucker—who Facebook is also using as an expert in this case—was also deposed.

18 **FTC v. Meta Transcripts and Depositions.** During the October 20, 2022 status conference,
 19 the Court provided guidance to the parties on a process by which Plaintiffs could request transcripts
 20 from the *FTC v. Meta* antitrust lawsuit, in which depositions are ongoing. Specifically, the Court
 21 already directed Facebook to provide a list of the depositions, so that Plaintiffs could periodically
 22 request—and Facebook could then produce—a subset of transcripts. Facebook is not complying
 23 with the Court’s instructions to provide the complete list of depositions; instead, Facebook has only
 24 agreed to provide dates for the depositions of Facebook witnesses in the FTC case who are also
 25 document custodians in this case or appear on Plaintiffs’ initial disclosures. That excludes possibly
 26 relevant witnesses, and Plaintiffs cannot identify such witnesses in order to request their transcripts
 27 unless Facebook first provides notice of their depositions to Plaintiffs.

28 Even in this case management statement, Facebook still refuses to ultimately produce the

1 subset of *FTC v. Meta* transcripts that Plaintiffs request. Facebook commits only to “**consider**
 2 Plaintiffs’ requests . . . to the extent Plaintiffs demonstrate the relevance[.]” That is not what the
 3 Court ordered; the Court did not confer on Facebook the role of unilaterally determining what is
 4 relevant and what is not; nor do the Federal Rules of Civil Procedure. Plaintiffs repeat their request
 5 that Facebook be ordered to provide the list of **all** Facebook employee depositions in *FTC v. Meta*,
 6 so Plaintiffs can make select requests.

7 Plaintiffs nearly three months ago requested two *FTC v. Meta* Rule 30(b)(6) transcripts. Dkt.
 8 377. Facebook refused Plaintiffs’ request unless Plaintiffs agreed to a series of unnecessary pre-
 9 conditions, including reductions in Plaintiffs’ deposition time in this case. Plaintiffs have not yet
 10 received those transcripts, and the parties’ dispute is presently before the Court. Plaintiffs continue
 11 to seek these 30(b)(6) transcripts and a list of future 30(b)(6) depositions as they are scheduled.

12 Facebook has continued to request that Plaintiffs coordinate deposition dates of witnesses
 13 that will be deposed in both *FTC v. Meta* and this case. In response to Facebook’s request—and
 14 while Plaintiffs do not agree it is required—Plaintiffs have so far identified 11 Rule 30(b)(1)
 15 depositions of current and former Facebook employees that the FTC will take in the future and
 16 Plaintiffs also seek to take, including: Brad Smallwood, Dan Rose, Keval Patel, David Fischer, Guy
 17 Rosen, Dave Wehner, Javier Olivan, Dan Levy, Sheryl Sandberg, Mark Zuckerberg, and Erin Egan.

18 For Facebook witness depositions that Plaintiffs will take and have agreed to schedule close
 19 in time to the FTC’s deposition of that witness, Plaintiffs request that the Court order Facebook to
 20 allow Plaintiffs to attend that deposition. The FTC does not oppose Plaintiffs’ request. Facebook’s
 21 assertion that Plaintiffs are attempting to “relitigate” Plaintiffs’ prior request is incorrect. Plaintiffs
 22 are requesting to attend the FTC’s depositions of witnesses that Plaintiffs agree to and will depose
 23 “close in time” to the FTC’s depositions. If, for example, Plaintiffs take a deposition of a witness
 24 on the day after the FTC deposes that witness, Plaintiffs are likely unable to receive the transcript
 25 before taking their own deposition. That is why Plaintiffs seek to attend those depositions of those
 26 witnesses.

27 For all other depositions that Plaintiffs will take of a Facebook witness that will also be
 28 deposed in *FTC v. Meta* but that are not feasible to take close in time to the FTC’s deposition,

1 Plaintiffs request that Facebook be ordered to produce the transcripts within 5 business days of the
 2 FTC's deposition of that witness. To be clear, Plaintiffs are not—as Facebook misstates—seeking
 3 “the transcripts of each deposition taken in the *FTC* action.” Plaintiffs are seeking the transcripts of
 4 the FTC’s depositions of Facebook witnesses who Plaintiffs also intend to depose.

5 **Plaintiffs’ Request Will Improve the Deposition Process.** Though only Facebook knows
 6 the identities of all witnesses who have provided testimony in these other litigations and
 7 investigations—information that Facebook refuses to provide to Plaintiffs in full—publicly
 8 available information confirms that witnesses who have provided testimony in the aforementioned
 9 litigations and investigations are possible, if not likely, deponents in this case too. As described
 10 above, these include, for example, CEO Mark Zuckerberg, Chief Privacy Officer Erin Egan, Vice
 11 President and Deputy Chief Privacy Officer Rob Sherman, Vice President of Business Messaging
 12 Dan Levy, Head of New Product Experimentation Ime Archibong, Public Policy Director for
 13 Privacy and Data Policy Allison Hendrix, former Vice President of Partnerships Dan Rose, former
 14 Product Manager Yul Kwon, and former Platform Operations Manager Sandy Parakilas, among
 15 others.

16 Facebook’s production of the transcripts specifically identified above—as well as lists of
 17 transcripts to facilitate future requests—will allow Plaintiffs in this case to identify relevant
 18 witnesses more efficiently, avoid burdening less relevant witnesses with unnecessary depositions,
 19 and prepare and take more efficient depositions which will also reduce the burden on these
 20 witnesses. It will also prevent Facebook from testifying inconsistently among the matters.

21 **Plaintiffs’ Request Imposes No Burden.** Plaintiffs’ request imposes little to no burden on
 22 Facebook. For depositions and interviews that have already occurred, Facebook has already
 23 gathered these transcripts, and re-producing them to Plaintiffs costs nothing. In any case, and to
 24 further limit any supposed burden, Plaintiffs already agreed to limit their request to select, relevant
 25 transcripts, using a process similar to the one the Court outlined with respect to deposition transcripts
 26 from the pending *FTC v. Meta* antitrust case. *See* Oct. 20, 2022 Hrg. Tr. at 5–7. Specifically, when
 27 Facebook previously refused to produce all transcripts from these matters, Plaintiffs proposed that
 28 Facebook provide a list of transcripts from the requested litigations and investigations so that

Plaintiffs could request select, relevant transcripts which Facebook would then produce. Facebook rejected Plaintiffs' proposal.

Plaintiffs' Requested Relief. Plaintiffs were optimistic that a process for requesting transcripts from other Facebook litigations and investigations like the one the Court outlined for requesting transcripts from *FTC v. Meta* would resolve the parties' dispute without the need for Court intervention. But Facebook has failed even to follow the Court's instructions to provide Plaintiffs a list of all depositions in *FTC v. Meta* and then produce the select transcripts Plaintiffs requested. As a result, Facebook has to date—and in response to Joint RFP No. 1—produced **zero** transcripts from *FTC v. Meta* and from other Facebook-related lawsuits or investigations.

10 Depositions in this case are scheduled to begin in early February. Accordingly, in order for
11 Plaintiffs to receive the requested transcripts from the specified lawsuits and investigations in time
12 to assist with the evaluation, selection, and preparation of depositions in this case—and in a manner
13 consistent with the Court’s guidance regarding a list-based approach for *FTC v. Meta* transcripts—
14 Plaintiffs respectfully request that the Court order Facebook to: (1) immediately produce the specific
15 witness transcripts identified above; (2) immediately provide Plaintiffs with the lists of depositions
16 and transcripts in the other specified lawsuits and investigations for which Plaintiffs do not already
17 have the lists, and then produce to Plaintiffs the select transcripts that Plaintiffs request, within five
18 business days of Plaintiffs’ making such a request. Without such relief, Facebook will continue to
19 refuse to provide the lists of depositions and transcripts from these relevant lawsuits and
20 investigations. Even assuming Plaintiffs are somehow able to discover the identities of these
21 witnesses and deponents, Facebook will also likely continue to refuse each of Plaintiffs’ select
22 requests once Plaintiffs make them, requiring piecemeal motion practice and resolution.

2. Meta's Statement

24 The Court need not address Plaintiffs' lengthy arguments about Joint RFP 1 because this
25 dispute is not ripe for the Court's resolution. If Plaintiffs want to bring this dispute to the Court's
26 attention, they are required to file a three-page discovery dispute letter. S.O. for Discovery in Civil
27 Cases ¶ 18. Instead, Plaintiffs improperly attempt to circumvent the Court's orderly rules by
28 elaborating on this topic for nearly *ten* pages of this statement. While Meta responds to this issue,

1 below, to preserve its rights, assuming the Court would prefer to decide this issue pursuant to its
 2 orderly process for resolving discovery disputes, it may go directly to page 22 of this statement.

3 Even if this Court were to consider Plaintiffs' wildly overbroad and unduly burdensome
 4 requests, it should reject them. *First*, some context. These cases are not filed by plaintiffs with
 5 legitimate grievances with Meta. They were brought originally to follow on lawsuits filed by the
 6 FTC and State Attorneys General. Things did not go as Plaintiffs planned when the FTC and State
 7 AG cases were initially dismissed, and substantial portions of the User and Advertiser cases were
 8 too. Those joint dismissals severed much of the overlap between the government cases and these
 9 cases, requiring Plaintiffs to fend for themselves.

10 That is why this is at least the third time Plaintiffs have come to the Court begging for bizarre
 11 requests like watching other depositions in other cases or seeking cloned discovery from myriad
 12 proceedings on unrelated (or tangentially related) proceedings from other countries. Plaintiffs
 13 simply do not know where to turn next. But that is not how the Federal Rules work. Plaintiffs may
 14 not, as they seem intent on doing, freeride on the back of foreign litigation and wholly unrelated
 15 matters in the hope of turning up some theory to again replace their own misbegotten ones. As
 16 discussed below, Plaintiffs repeatedly request that Meta produce to them a complete list of all
 17 depositions or investigative hearings that occurred in numerous litigations and investigations (many
 18 of which occurred in foreign jurisdictions) of at best minimal relevance, so that Plaintiffs can then
 19 select individual transcripts and demand that Meta produce them. But even when they made similar
 20 requests to this Court with respect to depositions in the FTC case—which includes a substantially
 21 similar alleged market for the users and many overlapping allegations as to conduct as the
 22 advertisers—they openly admitted that the cases were not that similar. For example, when asked
 23 by this Court to identify the degree of overlap between the FTC action and the Users' case, Users
 24 stated, "we believe there is some degree of overlap, but the claims and conduct at issue are different."
 25 Oct. 20, 2022 Hr'g Tr. at 4:24-5:1. For their part, Advertisers admitted that the overlap between
 26 their case and the FTC action is "[v]ery minimal . . . as far as it's different markets." *Id.* at 5:14-15.
 27 On that basis alone, this Court rejected Plaintiffs' requests for every deposition transcript. *See id.*
 28 at 6:5-6. Apparently undeterred, Plaintiffs now ask that this Court order Meta to produce transcripts

1 of depositions in various other far-flung investigations and litigations that are even more attenuated
 2 from this case. The Court should deny Plaintiffs' requests.

3 **Plaintiffs' Request Is Grossly Overbroad and Unduly Burdensome.**

4 Joint RFP 1 is far from "a straightforward document request." Plaintiffs' original request
 5 sought *all* pleadings, dispositive motions, summary judgment motions, expert reports, and
 6 deposition transcripts from over *twenty* different matters. Despite the request's facial overbreadth,
 7 Meta has from the start attempted to work with Plaintiffs to identify a reasonable and proportionate
 8 scope of production, but Plaintiffs have refused to do so in any meaningful way. By way of example,
 9 with respect to the many hours of 30(b)(6) testimony Users demand from the FTC litigation, Users'
 10 position has been decidedly uncompromising and contradictory. In an effort to have their cake and
 11 eat it too, Users argue that they are entitled to the transcripts because the deponents were designated
 12 on "highly relevant" topics and the testimony would streamline their discovery efforts, but they
 13 refuse to have the 11 hours of testimony they request count toward any amount of their 21 hours of
 14 30(b)(6) deposition time. Dkt. 174 at ¶ 1(a) (parties agreeing that "the total number of hours of
 15 30(b)(6) testimony of Facebook shall not exceed 21 hours"). If the topics are "highly relevant,"
 16 they should be the subject of a 30(b)(6) notice properly served in this case.⁴ Users should not be
 17 allowed to skirt 30(b)(6) limits and subject Meta's witnesses to needless duplicative testimony.

18 Moreover, until just recently and contrary to Plaintiffs' narrative that they urgently require
 19 this information, Plaintiffs failed to seriously pursue this request for *16 months*. For example, Meta
 20 heard nothing from Plaintiffs *for five months* after serving Plaintiffs with a letter in April 2022, in
 21 which Meta offered to further meet-and-confer so that Plaintiffs could explain why the materials
 22 they were seeking were relevant to this action. Similarly, though Plaintiffs now proclaim to need
 23 immediate production of investigative hearing transcripts from the FTC's pre-suit investigation,
 24 Plaintiffs have had Meta's document production from that investigation for over 18 months, yet
 25 Meta heard nothing from them on this request between early August and the Friday before this filing
 26 was due. If Plaintiffs genuinely considered this information critical to their case, they would not
 27

28 ⁴ Users have no pending Rule 30(b)(6) deposition notices to Meta.

1 have sat on their hands for months. Indeed, when Plaintiffs have bothered to engage meaningfully
 2 on Joint RFP No. 1, Meta has worked collaboratively with them to identify a reasonable scope of
 3 production. For example, when Plaintiffs identified specific unredacted filings and expert reports
 4 from other cases, Meta assessed those requests and produced much of what Plaintiffs requested (or
 5 pointed them to the requested information in its existing productions). The parties' practice simply
 6 does not bear out Plaintiffs' claim that further discussions would be unproductive. When Plaintiffs
 7 make reasonable requests, Meta responds to them in kind.

8 Furthermore, Plaintiffs' assertion that their requests will impose little to no burden on Meta
 9 is not based in reality. They now request that the Court order Meta to provide them with complete
 10 lists of transcripts for *more than twenty* litigations and investigations, many of which were
 11 conducted by non-U.S. regulators, with the ultimate goal of forcing Meta to produce to Plaintiffs
 12 transcripts for some unspecified number of current or former Meta employees. Contrary to
 13 Plaintiffs' apparent belief, Meta does not maintain a central repository of every deposition taken or
 14 testimony given by any current or former Meta employee that has occurred in every proceeding.
 15 The depositions from which Plaintiffs seek transcripts took place, in some instances, more than a
 16 decade ago. *Fraley*, for instance, was filed in March 2011, and *Social Ranger*, in December 2014.
 17 To generate the lists that Plaintiffs request, Meta would need to coordinate with each of the disparate
 18 in-house teams and outside law firms that represented Meta in those twenty-plus actions or
 19 investigations, many of which are based in non-U.S. jurisdictions, and also confirm that there are
 20 no protective orders or other concerns inherent in providing the material in this unrelated litigation.
 21 At this time, given Plaintiffs' cursory articulation of the reason why these investigations are relevant,
 22 and the likelihood that depositions concerning overlapping issues are cumulative of each other, the
 23 burden of producing this information is unwarranted.

24 **Transcripts from U.S. Antitrust Authorities' Investigations.** Plaintiffs' request lacks any
 25 explanation for why these are relevant or non-cumulative to deposition transcripts and exhibits from
 26 the *FTC* action. Indeed, as noted below, Meta has already provided Plaintiffs with a list of
 27 depositions occurring in the *FTC* action for any of 73 custodians in this case and any individuals
 28 appearing on any party's initial disclosures in this case (of which there are a total of 165 individuals),

1 and will agree to consider Plaintiffs' requests for transcripts of witnesses from the *FTC* action that
 2 Plaintiffs indicate an intention to depose in this case.

3 Furthermore, Users already served a request for production (User RFP No. 35) of the *FTC*
 4 pre-suit investigation hearing transcripts and have not meaningfully met-and-conferred with Meta
 5 on its proposed resolution to that request. Meta proposed to produce the *FTC* pre-suit investigation
 6 hearing transcripts on August 4, 2022, subject to reasonable limitations on their use and subject to
 7 the agreement that should Plaintiffs wish to pursue a deposition of an individual whose transcript
 8 Meta agreed to produce, the deposition would last no more than four hours. Counsel for Users
 9 responded in a one-line email that Users would not accept Meta's proposal, without explanation.
 10 Meta requested an explanation for why Users rejected that proposal on August 10, 2022, and
 11 indicated that they would be willing to remove the deposition hour limitation in the interest of
 12 compromise, or otherwise entertain a counterproposal. Users never responded—or said anything
 13 else about the *FTC* pre-suit investigation transcripts—until nearly *five months* later, the Friday
 14 before this filing was due.

15 **Transcripts from Foreign Antitrust Authorities' Investigations.** Users' and Advertisers'
 16 cases, involving alleged markets confined to the U.S., will be decided under U.S. antitrust law. Yet
 17 Plaintiffs next demand a list of current and former Facebook employees who provided testimony to
 18 various foreign competition authorities, including the Australian Competition & Consumer
 19 Commission, the U.K. Competition & Markets Authority, and the German Federal Cartel Office, so
 20 that Plaintiffs can make requests for specific transcripts. Yet again, Plaintiffs fail to explain why
 21 they need transcripts from foreign actions in addition to transcripts from actions involving U.S.
 22 antitrust law and alleged U.S. markets. Plaintiffs appear to suggest that because the markets alleged
 23 or discussed in those foreign investigations are similar to the markets they have constructed, they
 24 are somehow entitled to the transcripts that they want. This ignores that those countries have
 25 different laws, legal standards, facts, and competitive dynamics.

26 **Transcripts from Domestic Regulators' Investigations Regarding Facebook's Data**
 27 **Practices.** Plaintiffs' request—seeking transcripts from litigation, including, *SEC v. Facebook,*
 28 *Inc.*, No. 3:19-cv-04241 (N.D. Cal.), *District of Columbia v. Facebook, Inc.*, 2018 CA 008715 B

1 (D.C. Super. Ct.), and *People of the State of Illinois v. Facebook, Inc.*, 2018 CH 03868 (Ill. Cir.
 2 Ct.)—violates their prior agreement to narrow the litigations from which Plaintiffs seek deposition
 3 and expert materials to: (1) the Cambridge Analytica MDL; (2) the *Fraley* case; (3) the *Social*
 4 *Ranger* case; and (4) the *FTC* case. Dec. 2, 2022 Email from B. Pepperman to M. Jennings.⁵ And
 5 the breadth of Plaintiffs' next request—made for the first time in this case management statement—
 6 that Meta produce lists of the other current and former Facebook employees that provided testimony
 7 in *nearly ten different* investigations by the SEC, the FTC, and several State Attorneys General,
 8 including the D.C. Attorney General, that they claim relate to “data practices” compounds that
 9 violation.⁶ Again, Plaintiffs fail to explain how any such testimony has any relevance to this action,
 10 let alone why the “data practices” that were at issue in any of these investigations are relevant here.
 11 The mere fact that domestic government regulators have conducted various investigations since
 12 2018 does not automatically render those investigations relevant here. Nor have Plaintiffs offered
 13 any explanation as to how this request is not duplicative of their other requests, including their
 14 Cambridge MDL transcript request noted below.

15 **Cambridge Analytica MDL Deposition Transcripts.** Plaintiffs' request for the deposition
 16 transcripts of Sam Lessin, Steven Elia, Antonio Garcia-Martinez, Shirine Sajjadi, Mike Vernal, Bill
 17 Fusz, Aldo King, Yul Kwon, Vladimir Fedorov, Monicka Bickert, Rob Sherman, Eddie O'Neil,
 18 Konstantinos Papamiltiadis, Erin Egan, Steve Satterfield, Dan Rose, Ime Archibong, and Allison
 19 Hendrix is premature. Indeed, Plaintiffs made this request for the first time in this filing. Meta is
 20

21 ⁵ Plaintiffs also request a transcript of Sandy Parakilas's D.C. Attorney General testimony. On
 22 January 10, 2023 Plaintiffs informed Meta that Mr. Parakilas' counsel offered to produce to
 23 Plaintiffs the transcript of Mr. Parakilas' testimony to the D.C. Attorney General solely in order for
 24 Plaintiffs to undertake a reasonable and good faith assessment of whether Plaintiffs could forego
 25 burdening Mr. Parakilas—a nonparty—with a deposition in this matter, and subject to Meta's
 26 agreement. On January 11, Meta as a courtesy to Mr. Parakilas, who is a nonparty, informed
 27 Plaintiffs that it is willing to agree that his counsel may share the transcript with Plaintiffs for the
 28 purpose of making a good faith determination as to whether Plaintiffs can forego his deposition in
 this case, subject to treatment under the highest level of confidentiality provided for in the protective
 order in that matter.

6 To the extent Plaintiffs seek (also for the first time) a transcript of Mark Zuckerberg's SEC
 testimony, that request should also be denied because Plaintiffs have failed to provide any
 explanation as to how Mr. Zuckerberg's testimony may bear on Plaintiffs' allegations at issue in
 this action.

1 happy to meet-and-confer further with Plaintiffs on this request and to hear why they think the
 2 individuals identified are relevant—particularly since many of them are not document custodians in
 3 this case, are not included in any party’s initial disclosures, and all but two have not been noticed
 4 for a deposition in this action. Concerning Plaintiffs’ additional request for a complete list of the
 5 Rule 30(b)(6) deposition topics, if the 30(b)(6) material from the Cambridge Analytica MDL is, in
 6 fact, highly relevant to this case (again, Plaintiffs have provided no explanation why they believe
 7 that to be the case), it should be the subject of a proper 30(b)(6) notice served *in this action*. If
 8 Plaintiffs will inform Meta of the topics on which they plan to request 30(b)(6) testimony, Meta is
 9 willing to work with Plaintiffs to determine whether prior 30(b)(6) transcripts might assist in
 10 narrowing or focusing those topics. Any other course of action simply permits Plaintiffs to skirt
 11 30(b)(6) limits and subject Meta and its witnesses to an obligation to provide needless, duplicative
 12 testimony.

13 **Social Ranger Deposition Transcripts.** As an initial matter, Meta has already agreed to
 14 produce the unredacted expert report of Dr. Dennis Carlton from *Social Ranger*, which Plaintiffs
 15 agreed resolves the request for expert reports as to *Social Ranger*. Nevertheless, they now seek
 16 more. As with nearly every other request for specific deposition testimony made in this filing,
 17 Plaintiffs’ request for specific transcripts from the *Social Ranger* litigation is not ripe, as Plaintiffs
 18 informed Meta of their request for the first time while the parties were exchanging drafts. Nor have
 19 Plaintiffs provided any good reason why these transcripts are relevant—a particular problem
 20 because *Social Ranger* differs in multiple significant ways from this case. *Social Ranger* was
 21 brought by a developer, not users or advertisers, and involved distinct theories of exclusionary
 22 conduct (related to developer-facing policies that Meta adopted in 2011), distinct markets (a “virtual
 23 currency services” market and a “social games” market), and distinct theories of harm (lost profits
 24 by a Facebook Platform developer).

25 **Fraley Deposition Transcripts.** Plaintiffs include no explanation whatsoever for why the
 26 “sponsored stories” transcripts they seek are relevant to this case. For good reason: neither the
 27 product itself nor the conduct alleged in *Fraley*—alleged appropriation of users’ names,
 28 photographs, and likenesses for advertising purposes—is a meaningful part of either class’s claims.

1 That Meta has produced documents that *mention* Messrs. Rajaram and Hegeman—who are *not*
 2 document custodians in this action—is of no consequence. The mere fact that certain non-custodian
 3 depositions were taken in *Fraley* does not render those transcripts relevant here. In the same vein,
 4 the use of the same expert witness (Dr. Tucker) that Meta used in *Fraley more than a decade ago*
 5 does not make her testimony relevant in this action; expert witnesses routinely offer opinions in
 6 unrelated cases. Nonetheless, Meta has already agreed to produce the class certification filings from
 7 *Fraley*. The Court should reject Plaintiffs’ demand that Meta be forced to do any more without a
 8 clear and cogent explanation as to the relevance of those materials. No such explanation exists here.

9 **FTC v. Meta Transcripts and Depositions.** Depositions of current and former Meta
 10 employees are underway in *Federal Trade Commission v. Meta Platforms, Inc.*, Case No. 1:20-cv-
 11 03590-JEB (D.D.C.) (“*FTC action*”). The FTC has thus far served three rounds of deposition notices
 12 on Meta, the first on November 3, 2022, the second on November 23, 2022, and the third on
 13 December 22, 2022, seeking depositions of a total of 50 current and former Meta employees. Of
 14 the depositions noticed in the *FTC action*, Meta identified 27 current or former Meta employees
 15 who are included in the initial disclosures of a party to this action or are document custodians in this
 16 action or both. Although a few of these overlapping depositions are scheduled for January, the bulk
 17 are scheduled for February through April.

18 Consistent with the Court’s guidance at the October 20, 2022 status conference (which was
 19 in line with what Meta had long suggested to Plaintiffs), on December 5, 2022, Meta asked Plaintiffs
 20 to inform Meta which of these overlapping depositions Plaintiffs intend to pursue in this case and,
 21 for any such depositions, whether Plaintiffs would agree schedule the depositions in this action close
 22 in time—either on consecutive days or at least within a week or so—of the deposition in the *FTC*
 23 action to minimize the burden on the witnesses, many of whom are non-parties. Plaintiffs initially
 24 refused Meta’s requests outright. However, on January 6, 2023, after months of efforts by Meta to
 25 discuss deposition coordination across the matters, Plaintiffs for the first time indicated a willingness
 26 to coordinate the depositions of certain overlapping witnesses, consistent with their prior
 27 representation to this Court that they would do so. Dkt. 364 at 2. Plaintiffs indicated that they
 28 intended to depose 11 of the 27 overlapping witnesses and proposed deposition dates for five of

1 those witnesses near in time to the witnesses' depositions in the *FTC* action.

2 In tentatively agreeing to coordination for certain depositions, however, Plaintiffs included
 3 a host of additional demands that—despite Plaintiffs' representations to the contrary—find no
 4 support in the Court's guidance during the parties' October 20, 2022 status conference or in law or
 5 logic. Plaintiffs repeat many of those same demands here. For example, Plaintiffs represent that
 6 this Court previously directed Meta to produce to Plaintiffs a list of every witness noticed for a
 7 deposition by the *FTC*, without regard to relevance. The Court did not direct Meta to do this.
 8 Rather, in response to Plaintiffs' prior request that the Court permit them to receive every *FTC*
 9 deposition transcript, the Court clarified that Plaintiffs' request was limited to only the witnesses
 10 that Plaintiffs identified as relevant to this action. Oct. 20, 2022 Hr'g Tr. at 6:5-6. Consistent with
 11 the Court's guidance, Meta provided Plaintiffs with a list of every witness noticed by the *FTC* and
 12 included in the initial disclosures of any party to this action or who is a custodian in this action.⁷
 13 Even amongst that set (which is presumably the set that is *most relevant* under Plaintiffs' own theory
 14 of the case), Plaintiffs have only indicated a present desire to depose 11 of the 27 witnesses so
 15 identified. It is unclear to Meta what relevance current or former Meta witnesses who are not
 16 included in any party's initial disclosures and who are not custodians in this action would have to
 17 this case, especially since Plaintiffs have attempted to distance their claims and allegations from
 18 those present in the *FTC* action.⁸

19 Plaintiffs' attempt to relitigate their request to attend depositions in a different case, in a
 20 different district, and be provided with all the transcripts from that case on demand (without a
 21 showing of relevance) should be rejected . . . again. The Court previously rejected Plaintiffs'
 22 request, stating, "I just don't understand why you want to sit in. I mean, I'm not hearing an
 23 overwhelming case about they are so similar you should just sit in on all these depos." Oct. 20,
 24 2022 Hr'g Tr. at 5:16-19. Meta is not asking to be anointed the unilateral arbiter of relevance; it is

25 ⁷ Between both Users' and Advertisers' cases, there are a total of 73 document custodians, and 165
 26 individuals included on a parties' initial disclosures. Should the *FTC* notice the deposition of any
 27 of these individuals (beyond the 27 witnesses Meta has already identified), Meta will so inform
 Plaintiffs.

28 ⁸ It is also unclear why Plaintiffs refuse to speak to the *FTC* about deposition scheduling, especially
 given that Plaintiffs and *FTC* have had such discussions in the past.

simply asking Plaintiffs to comply with the Court’s instruction that Plaintiffs have “some reason” for requesting a particular deposition transcript from the *FTC* case. *Id.* at 7:11-12. The Court similarly rejected Plaintiffs’ request that Meta produce the transcripts of each deposition taken in the *FTC* action, holding that—to the extent Plaintiffs would get transcripts at all—they would be limited to only those transcripts that Plaintiffs specifically identify as relevant to this action. *Id.* at 6:5-9. Consistent with the Court’s guidance, Meta will agree to consider Plaintiffs’ requests for *FTC* deposition transcripts to the extent Plaintiffs demonstrate the relevance of the witness and his or her testimony to this action. In the event a dispute about relevance, or the propriety of a particular transcript request arises, Plaintiffs can seek the Court’s guidance—as they have done with regard to Users’ request for particular 30(b)(6) transcripts. But Plaintiffs cannot outright ignore the Court’s prior rulings, as they presently do.

B. Protocol for Upcoming Relevant Market Tutorial

1. Plaintiffs’ Statement

The Court scheduled a relevant market tutorial for each of the Consumer and Advertiser cases to occur February 28, 2023, at 11:00 a.m. Dkt. 379; Oct. 20, 2022 Hrg. Tr. at 10:11–17. During the prior October 20, 2022 status conference, the Court directed the parties to consult the Court’s standing order regarding patent tutorials for guidance. *See* Oct. 20, 2022 Hrg. Tr. at 9:14–18. After consulting the “Tutorial and Claim Construction Hearing” section of the Court’s Standing Order for Claim Construction in Patent Cases—and given the particulars of an antitrust relevant product market tutorial—Plaintiffs proposed to Facebook a protocol to govern submissions to the Court and exchanges of information in advance of the February 28, 2023 tutorial. In particular, Plaintiffs proposed that:

- In advance of the tutorial, the parties exchange the names of their respective proposed presenters at the tutorial;
- As to written submissions to the Court, Plaintiffs have a total of 12 pages (Consumers have 6 pages, and Advertisers have 6 pages), and Facebook has a total of 12 pages for both cases (presumptively 6 pages for the Consumer case, and 6 pages for the Advertiser case); and
- The parties exchange their respective visual demonstratives for the tutorial 48 hours in advance of the tutorial.

1 Facebook has agreed to Plaintiffs' proposal to exchange visual demonstratives for the
 2 tutorial 48 hours in advance of the tutorial. While Facebook responded to Plaintiffs' proposal with
 3 questions, Facebook did not—prior to this case management statement—provide direct responses
 4 as to Plaintiffs' proposals regarding the exchange of proposed presenters and the format of written
 5 submissions.

6 Plaintiffs request that the parties exchange the names of proposed presenters sufficiently in
 7 advance of the tutorial, so that the parties can each ensure their respective presentations squarely
 8 address the issues most helpful to the Court. Facebook's statement that Plaintiffs' proposal
 9 somehow is intended to make the tutorial a "gotcha exercise" is unfounded. If anything, Facebook's
 10 refusal to commit to providing the name of its presenter until 7 days before the tutorial evinces a
 11 gotcha-style attitude. Plaintiffs merely seek the reciprocal exchange of presenters sufficiently in
 12 advance of the tutorial to ensure that the parties' respective presenters are addressing the same
 13 subject matter and from a similar perspective.

14 To further ensure an orderly tutorial, Plaintiffs also requested that the parties agree on page
 15 limits for written submissions to the Court in advance of the tutorial. Plaintiffs appreciate
 16 Facebook's confirmation that Facebook's submission will not exceed 12 total pages.

17 **2. Meta's Statement**

18 Meta has substantively responded to each portion of Plaintiffs' three-part proposal
 19 concerning the relevant market tutorial. Meta's response to Plaintiffs' proposal is consistent with
 20 this Court's Standing Order and discussions between the parties are ongoing. Nonetheless, because
 21 Plaintiffs are intent on raising this issue with the Court before it is ripe, Meta provides its response
 22 here.

23 First, Meta informed Plaintiffs that it was uncertain of the utility of the exchange of names
 24 between the parties because this is not an adverse process, and it is not yet (nearly seven weeks
 25 before the scheduled tutorial) in a position to identify who will be its representative(s). However,
 26 if this issue is important to Plaintiffs, Meta anticipates that it will be in a position to share the name(s)
 27 of its presenter(s) no later than one week before the tutorial—i.e., February 21. In any event, the
 28 Court's Standing Order does not require names of presenters be exchanged, and it is not clear how

1 knowing the identity of the individual(s) who will appear at the tutorial would, as Plaintiffs suggest
 2 in this filing, “ensure their respective presentations squarely address the issues most helpful to the
 3 Court.” Plaintiffs apparently view the tutorial as some sort of opportunity to impeach or make this
 4 into a “gotcha” exercise. As the Court knows, that is not the purpose of a tutorial. Second, consistent
 5 with the Court’s Standing Order, Meta informed Plaintiffs that it plans to file a written submission
 6 of no more than 12 pages in total. However, the relevant Standing Order does not dictate how pages
 7 must be allocated, and Meta will allocate the pages of its written submission as appropriate, so as,
 8 to turn a phrase, “squarely address the issues most helpful to the Court.” Plaintiffs are of course
 9 free to allocate their pages as they would like. Third, although not required by the Standing Order,
 10 Meta agreed to Plaintiffs’ requested exchange of visual demonstratives 48 hours in advance of the
 11 relevant market tutorial.

C. Protocol Regarding Non-Party Depositions

13 Pursuant to the Stipulated Deposition Protocol entered in this action, the parties agreed that
 14 Plaintiffs are collectively entitled to depose current Meta employees for a total of 200 hours of
 15 testimony, but left open for the parties to determine “limitations on additional categories of
 16 depositions as the case progresses, including non-party depositions (including former Facebook
 17 employees).” (Dkt. No. 174 at 2.) The parties’ respective positions regarding non-party depositions
 18 are described below.

1. Meta’s Statement

20 Meta proposes that Plaintiffs collectively and Meta each may take up to 175 hours of non-
 21 party deposition testimony (including former Meta employees), not to exceed 30 total depositions.
 22 In the event that a deposition is cross-noticed by multiple parties, the combined deposition will be
 23 limited to no more than 10 hours of deposition testimony, divided equitably among the noticing
 24 parties, unless otherwise agreed by the parties or ordered by the Court. In making this proposal,
 25 Meta expects that the remaining provisions of the Stipulated Deposition Protocol (to the extent they
 26 do not conflict) will continue to apply with equal effect.

2. Plaintiffs’ Statement

28 Plaintiffs propose that the following parameters apply to non-party depositions taken in this

1 case, subject to further agreement by counsel or by Court order.

2 **175 Hours of Non-Party Deposition Time Per Side.** The parties' Stipulated Deposition
 3 Protocol provides hours-based limits, rather than limits based on numbers of depositions. For
 4 consistency, and to provide each side flexibility, Plaintiffs propose that a similar, hours-based
 5 approach apply to non-party depositions. Specifically, Plaintiffs propose that Plaintiffs
 6 (collectively) and Facebook each may take up to 175 hours of non-party deposition testimony
 7 (including former Facebook employees). This is the equivalent of Facebook's 25-deposition
 8 proposal in hours. Plaintiffs also propose that there be no minimum time for non-party depositions,
 9 meaning each side's on-the-record time will be the time that counts toward each side's hours total
 10 (rather than some other minimum amount of hours that counts toward each side's total, regardless
 11 of the actual total number of hours that that side spends on-the-record during the deposition).

12 **Depositions of Former Facebook Employees.** For the depositions of former Facebook
 13 employees that Plaintiffs notice, Plaintiffs propose that Plaintiffs may question the witness for up to
 14 7 hours, and Facebook may question the witness for up to 1 hour. If Facebook cross-notices the
 15 deposition of a former Facebook employee that Plaintiffs have noticed, then Facebook may question
 16 the witness for up to 3 hours, and the deposition will be continued to a second day if the questioning
 17 proceeds for more than 8 hours on the record (subject to the witness's agreement).

18 **Depositions of Other Non-Parties.** For all other non-party depositions (i.e., non-Facebook
 19 witnesses), Plaintiffs propose that the side noticing the party may question the witness for up to 6
 20 hours, and the non-noticing side may question the witness for up to 1 hour. Assuming both Plaintiffs
 21 and Facebook notice the non-party deposition, then each side may question the witness for up to 5
 22 hours, and the deposition will be continued to a second day if the question proceed for more than 8
 23 hours on the record (subject to witness agreement).

24 **D. Advertisers' Production of Privacy Setting Screenshots**

25 **1. Meta's Statement**

26 In response to Meta's Request for Production No. 14, seeking "[a]ll documents concerning
 27 the privacy protections, privacy policies, or privacy practices of any online services that you used
 28 during the Relevant Time Period, including but not limited to documents sufficient to show all

1 privacy settings on all your accounts,” Advertisers produced various partially or entirely illegible
 2 images of their web-based privacy settings. In addition, Advertisers did not produce any documents
 3 showing their mobile privacy settings, despite having agreed to do so. Meta has asked that
 4 Advertisers replace the illegible privacy setting screenshots and produce screenshots of Advertisers’
 5 mobile privacy settings for Plaintiff Mark Young by January 30 (in advance of his upcoming
 6 deposition) and for the other Advertiser named Plaintiffs as soon as possible thereafter. Advertisers
 7 have not yet responded to Meta’s request.

8 **2. Advertisers’ Statement**

9 The above issue was first presented to Advertisers after business hours on January 11, 2023,
 10 the day before this Statement was to be filed. Advertisers are investigating Facebook’s assertion,
 11 and will respond as soon as practicable.

12 **III. Update Regarding Discovery Propounded to Date⁹**

13 **A. Plaintiffs’ Statement**

14 With the exception of Joint RFP 1, discussed above, Facebook substantially completed its
 15 document production in response to Plaintiffs’ already-served document requests during the week
 16 of December 19, 2022; December 19, 2022 is the substantial completion deadline set by the Court.
 17 Dkt. 379. This excludes documents that Facebook intends to include on privilege logs. It also
 18 excludes the responsive, non-privileged documents that Facebook anticipates producing by January
 19 13, 2023, following Facebook’s discovery of a vendor issue that caused approximately 465,000
 20 documents to be erroneously excluded from Facebook’s review queue and which Facebook began
 21 reviewing on December 6, 2022. *See* Dkts. 400, 403. As a courtesy, and while reserving their
 22 rights, Plaintiffs agreed to Facebook’s request for an extension.

23 Plaintiffs served their first six Rule 30(b)(1) deposition notices for certain current and former
 24 Facebook employees on January 4, 2023, seeking deposition dates in February 2023. Plaintiffs
 25 await Facebook’s response, including whether Facebook’s counsel represents—and will accept

26
 27 ⁹ For conciseness, the parties focus this section of the Joint Case Management Statement on
 28 discovery since October 13, 2022, the date of the parties’ last Joint Case Management Statement.
 The parties’ prior Joint Case Management Statements contain similar summaries of discovery up to
 the dates of those statements’ respective filings.

1 service of the subpoenas for—certain of the requested former Facebook employees. Plaintiffs
 2 anticipate issuing additional deposition notices and subpoenas in the near term.

3 **Consumers' Further Statement:** Consumers continue to discuss with Facebook the scope
 4 of Facebook's document production regarding its "Commitment Manager" efforts and data
 5 regarding its Study and Viewpoints data compensation services. Consumers also propounded their
 6 Fifth Set of Requests for Production to Facebook seeking certain documents and structured data,
 7 and Facebook's responses and objections are due on January 23, 2023.

8 Consumers have continued to negotiate with certain non-parties the scope of those non-
 9 parties' document productions in response to Consumers' document subpoenas. Since the prior
 10 October 13, 2022, case management statement, Consumers have also issued additional non-party
 11 subpoenas, including to possible vendors for the "Facebook Research App" data compensation
 12 service. In addition, and as stated above, Consumers have filed a discovery letter brief seeking to
 13 compel further document production from non-party Apple Inc., which is currently pending before
 14 the Court. Dkt. 398. Apple's response is due on January 16, 2023. Dkt. 404.

15 Consumers will raise with the Court any disputes regarding the above discovery items,
 16 should it become necessary.

17 **Advertisers' Further Statement:** Advertisers have served subpoenas on several non-
 18 parties and continue to negotiate with those non-parties as to their respective productions.
 19 Advertisers anticipate serving additional non-party subpoenas in the near future.

20 **B. Meta's Further Statement**

21 **Discovery Propounded by Meta.** On November 29, 2022, Meta served its Third Set of
 22 Requests for Production to Users. On December 29, 2022, Users served their responses and
 23 objections.

24 On December 19, 2022, Meta served its Third Set of Interrogatories to Users. Users'
 25 responses and objections are due January 18, 2023.

26 On January 5, 2023, Meta noticed the deposition of named Advertiser Plaintiff, Mark Young.
 27 Mr. Young's deposition will take place on February 23, 2023.

1 On January 11, 2023, Meta served its Fourth Set of Interrogatories to Advertiser Plaintiffs.
 2 Advertisers' responses and objections are due February 10, 2023.

3 **Requests for Production.** Meta substantially completed production on December 19, 2022
 4 of all email and workchat data for the 73 agreed custodians with the exception of material being
 5 considered for inclusion on Meta's privilege logs and approximately 500 documents Meta identified
 6 as potentially subject to various confidentiality agreements with non-parties.¹⁰ The December 19
 7 production also substantially completed Meta's anticipated production of non-custodial documents
 8 responsive to plaintiffs' Requests for Production.

9 **Interrogatories.** On December 16, 2022, Meta served supplemental responses to Advertiser
 10 Plaintiffs' Interrogatory Nos. 5, 7, and 8 of their Second Set of Interrogatories. As a result,
 11 Advertisers withdrew their discovery letter brief seeking supplemental responses to Interrogatory
 12 Nos. 5, 7, and 8. Dkt. Nos. 385, 402.

13 **IV. Update Regarding Lawsuits Filed by FTC and State Attorneys General**

14 In *Federal Trade Commission v. Meta Platforms, Inc.*, No. 1:20-cv-03590-JEB (D.D.C.),
 15 fact discovery, including depositions, is underway and scheduled to close on May 22, 2023. Dkt.
 16 No. 103. In *State of New York, et al v. Meta Platforms, Inc.*, No. 21-7078 (D.C. Cir.), oral argument
 17 on the States' appeal of the district court's dismissal order took place on September 19, 2022. Dkt.
 18 No. 1950973.

19 **V. Joint Case Management Statement Exchange Schedule**

20 **A. Meta's Statement**

21 Meta respectfully requests that the Court enter a protocol for the drafting and exchange of
 22 drafts of future joint case management statements. During the drafting process for numerous of the
 23 parties' joint case management statements—including this one—submitted to this Court, Plaintiffs
 24 have set deadlines they have then proceeded to ignore, have refused to allow Meta appropriate time
 25

26 ¹⁰ As described in the parties' Joint Stipulation Regarding Substantial Completion Date for
 27 Document Production, on December 6, 2022, Meta's document-review vendor advised Meta that it
 28 had used an incorrect date field to search certain non-email document collections. Dkt. No. 400. At
 the parties' request, the Court extended the substantial completion deadline for the documents
 described in their Joint Stipulation to January 13, 2023. Dkt. Nos. 400, 403.

1 to respond to their edits to drafts in progress, and have engaged in gamesmanship through last minute
 2 substantive edits to the statements hours before filing. To address these recurring issues, Meta
 3 requests that the Court order the below schedule to be followed for all future joint case management
 4 statements:

- 5 • **12 pm Pacific, 3 business days before filing:** Parties exchange initial drafts of their
 6 respective joint case management statements.
- 7 • **9 am Pacific, day of filing:** Parties exchange revisions to initial drafts of their
 8 respective joint case management statements.
- 9 • **5 pm Pacific, day of filing:** Parties exchange final drafts of their respective portions
 10 of the joint case management statement. Plaintiffs collate the draft, and file shortly
 11 thereafter.

12 The need for this schedule is borne out by the parties' most recent exchange leading to this
 13 filing. More than one week before this joint case management was due, Meta proposed a schedule
 14 by which the parties exchange drafts of their portions. Meta asked that the parties conduct a first
 15 exchange on Monday, January 9, a second exchange at 9am PT on Thursday, January 12, and a final
 16 exchange at 5 pm PT that same day with Plaintiffs to file shortly thereafter. Plaintiffs insisted on
 17 delaying the first exchange until Tuesday, January 10, and the second exchange until 12 pm PT on
 18 Thursday, January 12. Plaintiffs then demanded that the parties exchange final file-ready copies at
 19 3 pm PT, which would have deprived Meta's outside counsel and in-house counsel a reasonable
 20 opportunity to prepare their responsive sections. But after the second exchange, Plaintiffs failed to
 21 communicate with Meta regarding the final exchange, ignoring three outreaches from Meta until
 22 after 6 pm PT. Plaintiffs' actions in this and in prior preparations of joint submissions have
 23 hampered the fair exchange of positions and prejudiced Meta.

24 Meta respectfully submits that the above schedule puts both sides in the best position to
 25 fairly and efficiently arrive at a joint submission that will facilitate the Court's management of the
 26 case.

27 B. Plaintiffs' Statement

28 Plaintiffs strongly dispute Facebook's mischaracterizations regarding the source of

1 difficulties regarding the parties' exchange of portions for case management statements. To the
2 extent that the Court would like to discuss this issue further, Plaintiffs are happy to do so at the
3 upcoming status conference.

4 **VI. Other Developments**

5 **1. Joint Mediation Update**

6 The parties have agreed upon an experienced mediator with significant relevant experience,
7 Greg Lindstrom. All parties have had initial discussions with the mediator.

8 **2. Update Regarding Advertisers' FAC**

9 On December 6, 2022, the Court denied Facebook's motion to dismiss Advertisers' First
10 Amended Complaint ("FAC"). Dkt. 396. On December 12, 2022, Facebook and Advertisers
11 stipulated to extend Facebook's deadline to respond to the FAC by twenty-one days, up to and
12 including January 10, 2023. Dkt. 397. On January 10, 2023, Facebook filed its Answer. Dkt. 408.

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1 DATED: January 12, 2023

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1 **ATTESTATION OF KEVIN Y. TERUYA**

2 This document is being filed through the Electronic Case Filing (ECF) system by attorney
3 Kevin Y. Teruya. By his signature, Mr. Teruya attests that he has obtained concurrence in the filing
4 of this document from each of the attorneys identified on the caption page and in the above signature
5 block.

6 Dated: January 12, 2023

7 By /s/ Kevin Y. Teruya

8 Kevin Y. Teruya

9 **CERTIFICATE OF SERVICE**

10 I hereby certify that on this 12th day of January 2023, I electronically transmitted the
11 foregoing document to the Clerk's Office using the CM/ECF System, causing the document to be
12 electronically served on all attorneys of record.

13 By /s/ Kevin Y. Teruya

14 Kevin Y. Teruya